

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHRISTOPHER S. JOHNSON,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

NO. C05-1283P

ORDER OF DISMISSAL

This matter comes before the Court on a Report and Recommendation (R&R) by the Honorable United States Magistrate Judge Monica J. Benton (Dkt. No. 22) which recommends dismissal of this action. Having reviewed the R&R, Petitioner's objections, and the balance of the record, the Court ADOPTS IN PART the R&R and DISMISSES this action.

Petitioner Christopher Johnson's petition in this matter is labeled as a "Writ of Prohibition." The petition, which includes a number of complaints about Mr. Johnson's state court criminal conviction, requests that this Court: (1) "arrest" his pending direct appeal of his criminal conviction in the Washington Court of Appeals; and (2) issue an order directing the Washington Court of Appeals to file his personal restraint petition under a particular cause number.

Judge Benton construed Mr. Johnson's petition as a habeas corpus petition, based his complaints about his state court conviction. (Dkt. No. 9). Judge Benton declined to serve his petition

1 and provided Petitioner with 30 days to file an amended habeas petition. Because Mr. Johnson did not  
2 file an amended habeas petition within 30 days, Judge Benton has recommended dismissal of this  
3 action under Rule 41(b).

4 In his objections to the R&R, Mr. Johnson states that he is not challenging his state court  
5 conviction in this action. He maintains that he wishes to seek a writ of prohibition and that his petition  
6 should not be construed as a habeas petition. However, as this Court has previously informed  
7 Petitioner by order dated November 30, 2005, he may not seek a writ of prohibition against the  
8 Washington Court of Appeals in this Court. As the Court noted in a prior order in this matter:

9 In general, a writ of prohibition may not be brought in a federal district court to prohibit  
10 actions by a state court. See, e.g., Londono-Rivera v. Virginia, 155 F. Supp. 2d 551, 559 n.1  
11 (E.D. Va. 2001) (“a federal district court cannot issue a writ to a state court”); Siler v. Storey,  
12 587 F. Supp. 986, 987 (N.D. Tex. 1984) (“[w]rits of prohibition traditionally have been used  
13 by *appellate* courts to exert their revisory powers over inferior courts, but it is not an  
appropriate remedy to control jurisdiction of other nonsubordinate courts.”) (emphasis in  
original). To the extent that Petitioner is seeking a writ of prohibition directed at the  
Washington Court of Appeals, such a writ would have to be filed in the Washington Supreme  
Court. See RCW 7.16.290 - .300.

14 (Dkt. No. 13 at 2).

15 As a result, Petitioner has been informed that he cannot maintain a petition for a writ of  
16 prohibition in this Court. Nonetheless, Petitioner has not sought to amend his petition and he  
17 adamantly maintains that a writ of prohibition is the only form of relief he is seeking in this action,  
18 rather than habeas corpus relief.

19 It is clear that this action is subject to dismissal regardless of whether it is construed as a  
20 petition for a writ of prohibition or as a petition for a writ of habeas corpus. As a result, the Court  
21 adopts the R&R to the extent that it recommends dismissal of this action. However, the Court will  
22 accept Petitioner’s representations that he does not intend to seek habeas relief in this proceeding and  
23 only seeks a writ of prohibition.

1 Therefore, the Court: (1) construes Mr. Johnson's petition as seeking a writ of prohibition,  
2 rather than habeas corpus relief; and (2) dismisses his petition for a writ of prohibition for lack of  
3 subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1).

4 The clerk is directed to send copies of this order to Petitioner and to the Honorable Monica J.  
5 Benton.

6 Date: July 24, 2006.

7 s/Marsha J. Pechman  
8 Marsha J. Pechman  
9 United States District Judge  
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